In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 616

MORRISTOWN TRUST CO. AS EXECUTOR OF THE LAST WILL AND TESTAMENT OF HENRY W. WILLIAMS, DECEASED, PETITIONER

v.

JOHN E. MANNING, UNITED STATES INTERNAL REVENUE COLLECTOR FOR THE FIFTH DISTRICT OF NEW JERSEY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact, conclusions of law, and opinion of the District Court (R. 63a-77a) are reported at 104 F. Supp. 621. The opinion of the Court of Appeals (R. 82-83) is reported at 200 F. 2d 194.

JURISDICTION

The judgment of the Court of Appeals was entered on November 26, 1952. (R. 83.) The petition for a writ of certiorari was filed on February 20, 1953. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTION PRESENTED

Whether in the circumstances of this suit for an alleged erroneous exaction of estate taxes the courts below erred in following an applicable decision of this Court rendered subsequent to decedent's death.

STATUTES INVOLVED

The pertinent statutes are set forth in the Appendix, *infra*, pp. 12-16.

STATEMENT

The facts as stipulated, and as found by the District Court, (R. 63a-66a) may be summarized as follows:

The taxpayer is the executor of the estate of Henry W. Williams, who died on January 30, 1936. As such executor, the taxpayer filed an estate tax return on December 29, 1936. (R. 64a.)

The tax indicated in the return, amounting to $24,583.07, was paid by the taxpayer on April 19, 1937, and a deficiency tentatively determined by the Commissioner on September 13, 1939, amounting with interest to $19,822.17, was paid by the taxpayer on May 1, 1940. In the computation of both

the tax and the deficiency, deductions for certain executor's commissions, attorneys' fees, and miscellaneous administration expenses were not taken, and the 80 per cent credit allowable on account of New Jersey transfer inheritance taxes was not made. These deductions were not taken and this credit was not made because the amounts thereof were not determined or determinable at the time. (R. 64a.)

Subsequently, the amount of such commissions, fees and expenses was fixed and determined at $54,715.99 in the probate court of New Jersey, and the New Jersey transfer inheritance taxes were paid. On June 12, 1942, the taxpayer then filed with the Commissioner of Internal Revenue a claim for refund of an alleged overpayment of the federal estate tax. (R. 64a-65a.)

On March 21, 1944, the Commissioner approved the deductions and credit but denied the refund claim on the ground that redetermination of the estate tax, including allowance of the deductions and credit, revealed a net deficiency, amounting to $34,490.01, rather than an overpayment as claimed by the taxpayer. This deficiency resulted from inclusion in the gross estate of a previously omitted item, amounting to $199,450.91, representing the valuation of 32 annuity contracts which the decedent had purchased before his death. The figures for the valuation of the annuity contracts and for the amount of the asserted deficiency are not in dispute. (R. 65a.)

The 32 annuity contracts in question had been

purchased from various insurance companies by the decedent prior to March 3, 1931. All of these contracts were of substantially the same type—single premium, survivor annuity contracts, providing for an annual payment, or semi-annual payments, in a fixed amount, to Henry W. Williams during his lifetime and, upon his death, to his wife, Annie S. Williams, during her lifetime, if she survived him. In correspondence with the attorney for the taxpayer all of the insurance companies issuing such annuity contracts quoted the premiums which would have been charged if the annuities had been payable during the life of Henry W. Williams only. In all cases the quoted premiums were less than the premiums charged for the contracts which actually were issued. (R. 65a-66a.)

At the time of the Commissioner's final determination of an estate tax deficiency due to his inclusion of the value of the annuity contracts in the decedent's gross estate, the assessment and collection of such a deficiency were barred by the applicable statute of limitations. (R. 65a.)

Its refund claim having been denied, the taxpayer brought suit in the United States District Court for the District of New Jersey. The District Court sustained the Commissioner's position, holding that the value of the annuity contracts should have been included in the decedent's gross estate, and that, since this actually resulted in an underpayment of the tax despite the allowance of the additional deductions and credit, the tax-

payer was not entitled to a refund based on such deductions and credit, even though assessment and collection of the deficiency were barred by the statute of limitations. (R. 75a, 77a.) The Court of Appeals affirmed. (R. 82-83.)

ARGUMENT

The taxpayer apparently does not challenge the correctness of the determination of the Commissioner and both courts below that the value of the annuity contracts should have been included in the decedent's gross estate, that despite allowance of the deductions and credit upon which the refund claim was based there was an underpayment rather than an overpayment of the estate tax, and that the United States did not have money belonging to the taxpayer. Its principal contention seems to be that the courts below should not have applied the principle established by this Court in *Lewis* v. *Reynolds,* 284 U. S. 281, that a suit by a taxpayer for a refund of taxes may be defeated by showing that the taxpayer has not overpaid his tax. The contention is clearly without merit. The situation in the instant case is precisely the same as that which existed in the *Lewis* v. *Reynolds* case. There, as here, the statute of limitations barred the assessment and collection of the additional sum, and this Court held that that fact did not obliterate the right of the United States to retain payments already received so long as they did not exceed the amount which might have been properly assessed and demanded. Here, the payments previously received by the United States did not exceed the

amount that might have been legally assessed and demanded, and the court below was plainly correct in applying the *Lewis* v. *Reynolds* decision and denying recovery of the refund sought by the taxpayer.

Although taxpayer does not deny that the annuity contracts were properly includible in decedent's gross estate under the principle of *Commissioner* v. *Church's Estate,* 335 U. S. 632, as held by the court below, it argues (Pet. 9, 15) that it is inequitable to this taxpayer to include them because if the case had come on for trial prior to 1949, the decision of this Court in *May* v. *Heiner,* 281 U. S. 238 (overruled by the *Church* decision in 1949) would have required the substantive question whether the annuity contracts should be included in the gross estate to be resolved adversely to the United States, leaving no underpayment of taxes in 1936, and thus no basis for the application of the case of *Lewis* v. *Reynolds, supra.*[1] Taxpayer

[1] In denying the taxpayer's refund claim and in the courts below the Government has consistently maintained that there was an additional ground for requiring the value of the annuity contracts to be included in the decedent's gross estate. Thus, relying upon the principles established by this Court's decisions in *Klein* v. *United States,* 283 U. S. 231, and *Helvering* v. *Hallock,* 309 U. S. 106—as applied to annuity contracts by the Fifth, Ninth and Third Circuits, respectively, in *Commissioner* v. *Wilder's Estate,* 118 F. 2d 281, 282-283, certiorari denied, 314 U. S. 634; *Commissioner* v. *Clise,* 122 F. 2d 998, certiorari denied, 315 U. S. 821; and *Mearkle's Estate* v. *Commissioner,* 129 F. 2d 386—the Government has argued that the transfer from the decedent to his wife was contingent upon his death because the annuities continued to be payable to him and did not become payable to her or her estate unless he predeceased her. While it is true that in holding the annuities taxable the courts below did not rest their decisions upon this ground, it is also true that they did not reject it.

also refers (Pet. 8-14) to the Act of October 25, 1949, Section 7, *infra*, pp. 13-15, in which the effect of the *Church* decision was changed with respect to decedents dying after February 10, 1939, and prior to January 1, 1950, and suggests that Congress selected the date, February 10, 1939, only because that was the date of the enactment of the Internal Revenue Code, that Congress apparently never conceived that any cases involving estates of decedents dying before that date would still be pending, and that even though the Act of October 25, 1949, does not itself prevent reliance on the *Church* decision, that Act shows the inequity of applying the principle of the *Church* case to the estate of this decedent who died in 1936.

We believe, as pointed out in footnote 1, that the includibility of the annuity contracts in decedent's gross estate was warranted, not only on the ground that the decedent retained in substance income for life, but also on the basis of the philosophy of *Klein* v. *United States*, 283 U. S. 231, and *Helvering* v. *Hallock*, 309 U. S. 106, without benefit of the *Church* decision. However, even if it be assumed, *arguendo*, that the retention of income for life is the sole ground for including the annuity contracts in the decedent's estate, the courts below were justified in their reliance upon the *Church* decision.

The *Church* case involved a trust created in 1924, and this Court held that the decedent having reserved the income from the trust property for life, the trust was a transfer, within the meaning of Section 811(c) of the Internal Revenue Code, "in-

tended to take effect in possession or enjoyment at or after his death". This phrase has appeared in the federal revenue statutes since the first estate tax law in 1916, and makes the *Church* decision applicable here.

In the absence of Congressional action restricting the application of this Court's decisions, the lower federal courts are bound to apply the law as interpreted by this Court. This principle applies even though the decision of this Court is rendered after the case is on appeal. *Hormel* v. *Helvering,* 312 U. S. 552; *Helvering* v. *Richter,* 312 U. S. 561. It applies, *a fortiori,* where the decision of this Court is rendered prior to entry of judgment in the trial court. See also *Vandenbark* v. *Owens-Illinois Glass Co.,* 311 U. S. 538.

In the Act of October 25, 1949, Section 7, Congress did restrict the application of the *Church* decision with respect to decedents dying after February 10, 1939, and prior to January 1, 1950. In Section 607 of the Revenue Act of 1951, c. 521, 65 Stat. 452, Congress extended further relief in the case of property transferred by a decedent dying after March 18, 1937, and before February 11, 1939, by providing that the determination of whether such property is to be included in his gross estate under Section 302(c) of the Revenue Act of 1926, c. 27, 44 Stat. 9, as a transfer intended to take effect in possession or enjoyment at or after his death shall be made in conformity with Treasury Regulations in force at the time of his death.

Since the decedent here died in 1936, this legislation by its terms fails to touch the present case.

The court below correctly held that the specific limitation in the statute may not be ignored even for the exigency of a hard case (R. 74a). This seeming harshness disappears if, as we contend, the joint survivorship annuities purchased prior to March 4, 1931, would have been includible in the gross estate prior to the *Church* decision, a point not reached below.

No conflict exists, as alleged (Pet. 5-6), between the present case and *Routzahn* v. *Brown,* 95 F. 2d 766 (C.A. 6th). In that case the Commissioner had denied a taxpayer's refund claim on the sole ground that inclusion in the decedent's gross estate of certain property which had previously been erroneously omitted resulted in an underpayment rather than an overpayment of the estate tax. This was the only contested issue when the case was first tried. A judgment in favor of the taxpayer was reversed by the Court of Appeals. When the case again reached the District Court, the Collector was allowed to amend his answer to assert that other items of property should have been included in the decedent's gross estate. When by a subsequent motion the Collector again sought leave to amend his answer, his motion was denied. On appeal the Sixth Circuit merely held (p. 771) that the District Court had not abused its discretion in denying the Collector's motion. The Court of Appeals also pointed out (pp. 771-772) that, if the appeal should be decided on the merits, the Collec-

tor still could not prevail because none of the items of property should have been included in the decedent's gross estate. Thus, the Sixth Circuit's decision in *Routzahn* v. *Brown, supra,* like that of the District Court in *Dupont* v. *United States,* 28 F. Supp. 122 (D. Del.), turned solely on a question of pleading, both courts holding that the Government was precluded from urging issues which, because of the Government's failure to make timely amendments to its answer, were not framed by the pleadings. That problem is not involved in the case at bar.

The cases of *Stone* v. *White,* 301 U. S. 532, rehearing denied, 302 U. S. 639, and *Rothensies* v. *Electric Battery Co.,* 329 U. S. 296, involved the question of recoupment of one tax against another. The present case does not involve such a recoupment, but the question whether a taxpayer may recover a tax where it has not been shown that the tax has been overpaid.

CONCLUSION

The decision below is correct. There is no conflict of decisions and no question of importance is presented. The petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General.

H. BRIAN HOLLAND,
Assistant Attorney General.

ELLIS N. SLACK,
LEE A. JACKSON,
JOSEPH F. GOETTEN,
Special Assistants to the Attorney General.

APRIL, 1953.

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated— * * *

* * * * *

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *

* * * * *

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 803. FUTURE INTERESTS.

Section 302(c) of the Revenue Act of 1926, as amended by the Joint Resolution of March 3, 1931, is amended to read as follows:

"(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any pe-

riod which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money worth. * * *"

* * * * *

Act of October 25, 1949 (Technical Changes Act), c. 720, 63 Stat. 891:

SEC. 7. TRANSFERS TAKING EFFECT AT DEATH.

(a) Section 811(c) of the Internal Revenue Code (relating to transfers in contemplation of or taking effect at death) is hereby amended to read as follows:

"(c) *Transfers in Contemplation of, or Taking Effect at, Death.*—

"(1) *General Rule.*—To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise—

* * * * *

"(B) under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the

possession or enjoyment of, or the right to the income from, the property * * *, or

"(C) intended to take effect in possession or enjoyment at or after his death.

"(2) *Transfers Taking Effect at Death—Transfers Prior to October 8, 1949.*—An interest in property of which the decedent made a transfer, on or before October 7, 1949, intended to take effect in possession or enjoyment at or after his death shall not be included in his gross estate under paragraph (1) (C) of this subsection unless the decedent has retained a reversionary interest in the property, arising by the express terms of the instrument of transfer and not by operation of law, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 per centum of the value of such property. For the purposes of this paragraph, the term 'reversionary interest' includes a possibility that property transferred by the decedent (A) may return to him or his estate, or (B) may be subject to a power of disposition by him, but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. * * *"

* * * * *

(b) The amendment made by subsection (a) shall be applicable with respect to estates of decedents dying after February 10, 1939. The provisions of section 811(c) of the Internal

Revenue Code, as amended by subsection (a), shall (except as otherwise specifically provided in such section or in the following sentence) apply to transfers made on, before, or after February 26, 1926. The provisions of section 811(c) (1) (B) of such code shall not, in the case of a decedent dying prior to January 1, 1950, apply to—

(1) a transfer made prior to March 4, 1931;
* * *

(26 U. S. C. 1946 ed., Supp. III, Sec. 811).

Revenue Act of 1951, c. 521, 65 Stat. 452:

SEC. 607. TRANSFERS CONDITIONED UPON SURVIVORSHIP.

In the case of property transferred by a decedent dying after March 18, 1937, and before February 11, 1939, the determination of whether such property is to be included in his gross estate under section 302 (c) of the Revenue Act of 1926 (44 Stat. 70) as a transfer intended to take effect in possession or enjoyment at or after his death shall be made in conformity with Treasury Regulations in force at the time of his death.

SEC. 609. TRANSFERS TAKING EFFECT AT DEATH.

Effective with respect to estates of decedents dying after February 10, 1939, section 7 (b) of the Act entitled "An Act to amend certain provisions of the Internal Revenue Code," approved October 25, 1949 (63 Stat. 895), is hereby amended by striking out the word

"sentence" and inserting in lieu thereof "two sentences" and by inserting immediately preceding the last sentence thereof the following sentence: "The provisions of section 811(c)(1)(C) of such code shall not apply to a transfer made prior to September 8, 1916." The provisions of section 7(c) of such Act, as amended, shall not apply to an overpayment resulting from the application of this section.

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